



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

January 29, 2008

The Honorable Iris W. Estabrook, Chairman  
Senate Health and Human Services Committee  
State House Room 100  
Concord, NH 03301

RE: SB 514, relative to mercury exposure reduction and requiring insurance coverage for mercury-free fillings, vaccines, and injections for certain persons.

Dear Chairman Estabrook,

Thank you for the opportunity to comment on SB 514, which requires labeling of mercury-added vaccines, restricts the use of such vaccines and requires insurance coverage for mercury-free vaccines and fillings. The Department of Environmental Services (Department) takes no position on this bill but we have identified some technical issues that we would like to bring to the attention of the Committee.

In the statement of purpose, paragraph V., it states that "Much of the mercury deposited from the atmosphere is from human and natural sources...." In reality, *all* of the mercury comes from either natural or human sources, with human sources contributing the greatest amount.

Currently, New Hampshire law regulates the sale and disposal of many types of mercury-added products, including measuring devices, thermometers, switches, thermostats, batteries and fluorescent lamps. SB 514 would expand the Department's authority by creating a labeling program and banning the disposal of vaccines with intentionally-added mercury. In previous bills that regulate products with intentionally-added mercury, exemptions have been made for pharmaceuticals, biological products (such as vaccines) and other items regulated by the Food and Drug Administration (FDA) because of testimony that the FDA has pre-emptive authority over these substances. Current provisions in RSA 149-M, such as those found in 149-M:52 IV (exemption to notification) and RSA 149-M:58 VI (disposal ban), contain language specifically exempting substances regulated by the Federal Food and Drug Administration (FDA). Such language reads: "This section shall not apply to prescription drugs or any substance regulated by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 301 et seq. or to biological products regulated by the Food and Drug Administration under the Public Health Service Act, 42 U.S.C. section 262 et seq.)."

The language in proposed new RSA 149-M:59 I assumes that mercury can be somehow separated from the vaccine and recycled or properly disposed of. This is unlikely to be technically feasible. We suggest that second sentence be modified as follows: "All labels shall be legible and shall inform the purchaser, using words or symbols, in a minimum of 10-point font, that mercury is present in the product and shall clearly identify that the mercury-added product

~~should~~ **shall** not be disposed of **in solid waste landfills, transfer stations, or incinerators,** or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled or otherwise managed to ensure that the mercury in the product does not become mixed with other solid waste or wastewater. This language change would also make paragraph I consistent with the disposal ban for other mercury-added products contained in RSA 149-M:58.

Section 7 of the bill requires the department to make a comprehensive reevaluation of New Hampshire's fish consumption advisory and to consider a more restrictive advisory. The Department is to report its findings and recommendations to the Governor and general court no later than December 1, 2008. The New Hampshire Statewide Mercury Fish Consumption Advisory was reassessed in 2007 and the findings are currently undergoing a peer review process. The updated advisory is expected to be released in spring 2008. The Department will be happy to provide the Committee with copies of the report. Given that this task is nearly complete, the committee may wish to reconsider this requirement in the bill.

If you have any questions or need additional information, please contact me at 271-2958 or Stephanie D'Agostino at 271-2918 / Stephanie.D'Agostino@des.nh.gov.

Sincerely,

  
Thomas S. Burack  
Commissioner

cc: Senator Kenney, Representative Heard, Representative Carr